

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
PINE BLUFF DIVISION**

DARIN TYRONE RONE
ADC #120531

PLAINTIFF

V. NO: 5:05CV00177 JLH/HDY

GOLATT, *et al.*

DEFENDANTS

FINDINGS AND RECOMMENDATIONS

INSTRUCTIONS

The following recommended disposition has been sent to United States District Court Judge J. Leon Holmes. Any party may serve and file written objections to this recommendation. Objections should be specific and should include the factual or legal basis for the objection. If the objection is to a factual finding, specifically identify that finding and the evidence that supports your objection. An original and one copy of your objections must be received in the office of the United States District Court Clerk no later than eleven (11) days from the date of the findings and recommendations. The copy will be furnished to the opposing party. Failure to file timely objections may result in waiver of the right to appeal questions of fact.

If you are objecting to the recommendation and also desire to submit new, different, or additional evidence, and to have a hearing for this purpose before the District Judge, you must, at the same time that you file your written objections, include the following:

1. Why the record made before the Magistrate Judge is inadequate.
2. Why the evidence proffered at the hearing before the District Judge (if such a hearing is granted) was not offered at the hearing before the Magistrate Judge.
3. The detail of any testimony desired to be introduced at the

hearing before the District Judge in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced at the hearing before the District Judge.

From this submission, the District Judge will determine the necessity for an additional evidentiary hearing, either before the Magistrate Judge or before the District Judge.

Mail your objections and "Statement of Necessity" to:

Clerk, United States District Court
Eastern District of Arkansas
600 West Capitol Avenue, Suite 402
Little Rock, AR 72201-3325

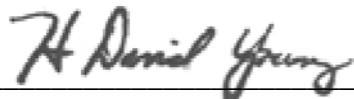
DISPOSITION

On October 6, 2005, the undersigned recommended, among other things, that Plaintiff's Complaint be dismissed with prejudice (docket entry #77). The Findings and Recommendations should be modified to propose that the Complaint be dismissed without prejudice.

IT IS THEREFORE RECOMMENDED THAT:

1. Defendants' Amended Motion to dismiss (docket entry #48) be GRANTED, and this case be DISMISSED WITHOUT PREJUDICE.
2. This dismissal count as a "strike" for purposes of 28 U.S.C. § 1915(g).
3. The Court certify that, pursuant to 28 U.S.C. § 1915(g), that any appeal from the Order and Judgment dismissing this action be considered frivolous and not in good faith.
4. All pending Motions be DENIED AS MOOT.

DATED this 25 day of October, 2005.



UNITED STATES MAGISTRATE JUDGE